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TAGS: [PGOV](#) [KJUS](#) [PINR](#) [CO](#)
SUBJECT: ELECTORAL GUARANTEES DECISION BOLD BUT RISKY MOVE
FOR COURT; URIBE REMAINS STRONG FAVORITE

REF: A. BOGOTA 10686
[1](#)B. BOGOTA 9896
[1](#)C. BOGOTA 8695

Classified By: CDA Milton K. Drucker, Reasons: 1.4 B & D.

Summary

[1](#)1. (C) The Constitutional Court's ruling in favor of the Electoral Guarantees law was a bold but risky move that some say could call into question the court's legitimacy. The court essentially rewrote the law to avoid sending it back to the Congress for amendments. A Congressional rewrite would have likely made it impossible for President Uribe to run given the short time left before campaigns start. However, the court may have overstepped institutional boundaries and solidified opposition to its "activist" character. Despite murmuring that the court's decision places too many restrictions on Uribe's campaign, the president remains the overwhelming favorite. He will win or lose based on the electorate's judgment of his record, not because of the court-imposed campaign restrictions or the effectiveness of opposition figures. The perception that the decision was tough on Uribe can only help him, as it increases the likelihood that all will perceive the election, and thus the result, to be fair. End summary.

Court Rewrites Electoral Guarantees Law

[1](#)2. (U) The Constitutional Court essentially rewrote major portions of the Electoral Guarantees Law in its 7-2 vote to uphold the measure, a decision that gave the green light for President Uribe to run for reelection. The court approved verbatim 12 of the law's 52 articles, rewrote substantially another 20, partially struck down 18, and threw out another two. As one of Colombia's four co-equal high courts, the Constitutional Court's ruling is binding.

[1](#)3. (U) The court's rewrites included:

--Political Activity by GOC employees: the Court changed the law to prevent employees from engaging in partisan campaign activities.

--Spending limits: the Court reduced the incumbent's spending limit to a level significantly below that for challengers (the incumbent limit for 2006 is the same amount as in the 2002 campaign).

--Campaign donations: the Court eliminated the provision in the law allowing corporations to donate to campaigns; now only individuals may donate.

--Presidential community council meetings: the Court ruled that Uribe's weekly meetings cannot be televised live on public television.

--Use of Presidential Palace: the Court added language prohibiting the incumbent from using the Palace for partisan campaign events.

Decision a Mixed Blessing for Uribe

¶4. (C) The decision was a mixed blessing for Uribe. It was friendly in that it allows him to launch his reelection campaign; the court could have struck down the law as unconstitutional, either in whole or in significant part (as the two dissenting judges wished), or returned the law to the Congress for a rewrite. The latter option would have likely resulted in Uribe losing the right to run again because the Congress would not have had time to correct deficiencies and obtain the court's blessing before electoral campaigns start. The decision was unfriendly to Uribe in that it places a number of key restrictions on his ability to campaign.

According to the court, Uribe must announce his reelection bid by November 28 and the campaign restrictions outlined above kick in from that date.

Legitimacy in Question?

¶5. (C) According to Uribe loyalists, the court's decision is consistent with its "activist" character and calls into question the court's long-term legitimacy. Some of post's contacts in Uribista circles (in the presidency and the Congress) tell us that a second Uribe Administration could push (either via the Congress or public referendum) to abolish the court, arguing that it "legislates from the bench." Such a move appears to have important adherents in the legal community as well. Nevertheless, it would be a challenging legal prospect and could be distracting for an administration that will confront significant security and economic/tax issues if it has a second term.

¶6. (C) Prior to the 1991 Constitutional reform, constitutional issues were decided by the constitutional chamber of the Supreme Court. One option for constitutional reforms would be to return to that system. It was a less activist court, more "respectful" of government prerogative.

Uribe's Next Steps

¶7. (C) Uribe's first step after announcing his candidacy by November 28 will be to choose a political party to serve as his vehicle (see Ref C for information on the pro-Uribe parties). The Conservative Party (PCC) is holding a national referendum November 27 to decide whether to support Uribe in coalition or run its own candidate. Party head and Senator Carlos Holguin publicly stated that the PCC might run its own candidate if Uribe announces that his vehicle party is the nascent National Unity Party. (Comment: Holguin's threat means little in real terms; the PCC has no-one that could challenge Uribe and the vast majority of its members are staunchly pro-Uribe. End Comment.) The most likely scenario, according to pundits, is that Uribe will select the

dormant "Colombia First" movement that brought him to power in 2002, in order not to offend the egos of the leaders of the four major pro-Uribe parties. The other parties would then join with Colombia First in coalition. Uribe must formally register his candidacy by January 28.

Opposition Strategy

18. (C) Opposition leaders, including members of the Liberal Party (PLC), Democratic Pole (PDI), and Democratic Alternative (AD), tell us that the presence of three or four leading opposition candidates on the ballot might force Uribe into a second round. (Electoral rules mandate a second round runoff between the top two first-round finishers if no candidate attains 50 percent of the vote.) Current public opinion data does not support their optimism, however. A wild card is two-time former Bogota mayor and independent Antanus Mockus, who may be the only rival that could run close to Uribe in a second round. Mockus announced his candidacy on November 19. In a head-to-head contest against Uribe, however, it is not clear that Mockus would have the star quality needed to outshine the charismatic president.

Comment

19. (C) Uribe's campaign abilities are immense and his ability as president to make news is unmatched by any candidate. He will win or lose based on the electorate's assessment of his record, not because of court-imposed campaign restrictions or the effectiveness of opposition figures. The court's decision raised hackles among the political class for a number of reasons, some legitimate,

some not. The court was making a political point in its decision about the importance of ensuring that all candidates have as fair a chance as possible in an environment where one candidate is the 800 pound gorilla. If Uribe is reelected, challenging the court could be a luxury he can do without. More immediately, the perception that the court's decision was tough on Uribe can only help the president, as it strengthens the likelihood that all candidates will be forced to admit the campaign, and thus the result, was fair.
DRUCKER